

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NORTH CAROLINA
STATESVILLE DIVISION
5:12-cv-95-RLV
(5:09-cr-41-RLV-DCK-1)

ELBERT MAURICE MAYFIELD,)
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)
Petitioner,)
)
vs.) ORDER
)
)
UNITED STATES OF AMERICA,)
)
)
Respondent.)
)

This matter is before the Court on Petitioner's Motion for Reconsideration of this Court's dismissal of Petitioner's Motion to Vacate, Set Aside, or Correct Sentence under 28 U.S.C. § 2255, (Doc. No. 18), based on the Court's finding that Petitioner did not file the motion to vacate within one year of when his conviction became final. The Court also, alternatively, dismissed the petition because Petitioner waived in his plea agreement the right to bring the claim raised in the petition. In the motion for reconsideration, Petitioner contends that this Court erred in holding that the petition was untimely. Petitioner's Motion for Reconsideration is denied. The petition was untimely for the reasons stated in the Court's prior Order.

IT IS THEREFORE ORDERED that:

1. Petitioner's Motion for Reconsideration, (Doc. No. 18), is **DENIED**.
2. **IT IS FURTHER ORDERED** that pursuant to Rule 11(a) of the Rules Governing Section 2254 and Section 2255 Cases, this Court declines to issue a certificate of appealability. See 28 U.S.C. § 2253(c)(2); Miller-El v. Cockrell, 537 U.S. 322, 338 (2003) (in order to satisfy § 2253(c), a petitioner must

demonstrate that reasonable jurists would find the district court's assessment of the constitutional claims debatable or wrong); Slack v. McDaniel, 529 U.S. 473, 484 (2000) (when relief is denied on procedural grounds, a petitioner must establish both that the dispositive procedural ruling is debatable and that the petition states a debatable claim of the denial of a constitutional right). Petitioner has failed to make the required showing.

Signed: December 18, 2013



Richard L. Voorhees
United States District Judge

